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**4. Descent and Distribution (§ 157\*)—Creditors' Rights—Subjecting Interest in Estate to Debts.**—A court of equity administering an estate may subject an heir's interest in the real and personal property to payment of a judgment upon which execution has not issued, either upon the theory that it will do complete justice, or that it may marshal the assets between the judgment creditor having a lien only upon the realty, and other creditors holding a lien upon both realty and personalty.

[Ed. Note.—For other cases, see Descent and Distribution, Cent. Dig. §§ 530-532.\* 1 Va.-W. Va. Enc. Dig. 172; 9 Va.-W. Va. Enc. Dig. 595, cited by the court.]

Appeal from Circuit Court, Campbell County.

Suit by the Board of Supervisors of Campbell County and others against Thomas B. Moorman was consolidated with a suit in which a will of defendant's brother had been partially set aside. From adverse decrees, defendant appeals. Affirmed.

*Caskie & Caskie* and *Wilson & Manson*, all of Lynchburg, for appellant.

*A. H. Light*, of Rustburg, for appellees.

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SNEAD et al. v. ATKINSON et al.

June 14, 1917.

[92 S. E. 835.]

**1. Dismissal and Nonsuit (§ 80\*)—Effect.**—Where suit to enforce a judgment lien was stricken under Code 1904, § 3312, authorizing such action where there has been no prosecution for five years, and providing that the case may be reinstated within a year, but not after, orders entered five years later, the case not having been reinstated, are void.

[Ed. Note.—For other cases, see Dismissal and Nonsuit, Cent. Dig. §§ 178-181.\* 4 Va.-W. Va. Enc. Dig. 708, 711.]

**2. Judgment (§ 855\*)—Enforcement—Equity.**—Where a suit to enforce a judgment lien was stricken under Code 1904, § 3312, authorizing such action for nonprosecution, and providing case may be reinstated within a year, a court of equity will not aid a judgment creditor in proceeding after the year for reinstatement has elapsed, where the judgment debtor has died and property proceeded against has been held over 15 years by parties acquiring it from the judgment debtor or his heirs and improvements have been made upon it.

[Ed. Note.—For other cases, see Judgment, Cent. Dig. §§ 1571-1576.\* 8 Va.-W. Va. Enc. Dig. 623.]

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

Appeal from Circuit Court, Goochland County.

Bill by John T. Snead and others against W. J. Atkinson and others. From a decree sustaining a demurrer to the bill, complainants appeal. Reversed and rendered.

*Smith & Smith* and *S. A. Anderson*, all of Richmond, for appellants.

*Jos. P. Sadler* and *Wm. M. Justis, Jr.*, both of Richmond, for appellees.

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YATES *v.* LEY.

June 14, 1917.

[92 S. E. 837.]

**1. Acknowledgment (§ 20 (2)\*)—Certificate by Trustee—Validity.**—Where a trustee in a deed of trust also took and certified the acknowledgment of the deed as a notary public, his certificate was void.

[Ed. Note.—For other cases, see Acknowledgment, Cent. Dig. § 106.\* 1 Va.-W. Va. Enc. Dig. 109.]

**2. Principal and Agent (§ 23 (5)\*)—Evidence—Sufficiency.**—In an action by the beneficiary against the trustee in a deed of trust for damages caused by loss of preference because of the invalidity of the deed of trust due to the trustee's act in certifying the acknowledgment as a notary public on the issue whether the trustee was the mortgagee's agent and bailee in negotiating and placing the loan, evidence held to support a verdict for the trustee.

[Ed. Note.—For other cases, see Principal and Agent, Cent. Dig. § 41.\* 1 Va.-W. Va. Enc. Dig. 248, 249.]

**3. Acknowledgment (§ 48\*)—Impeachment—Notaries.**—When a notary public acknowledges a deed within his jurisdiction and in good faith he acts judicially, and cannot be held liable in damages for any error made by him in the exercise of this function.

[Ed. Note.—For other cases, see Acknowledgment, Cent. Dig. §§ 241-243.\* 1 Va.-W. Va. Enc. Dig. 111.]

**4. Bailment (§ 13\*)—Principal and Agent (§ 61 (2)\*)—Liability for Neglect—Gross Neglect.**—An agent or bailee acting without compensation and solely for the accommodation of the principal or bailor is liable only for gross neglect.

[Ed. Note.—For other cases, see Bailment, Cent. Dig. §§ 42-44; Principal and Agent, Cent. Dig. § 97.\* 1 Va.-W. Va. Enc. Dig. 260; 2 Va.-W. Va. Enc. Dig. 227.]

**5. Trial (§ 260 (9)\*)—Instructions.**—An instruction that if defendant trustee, without pecuniary compensation, solely for the accommoda-

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\*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.